

In Courtroom Battle

By BEN A. FRANKLIN

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BALTIMORE, Md. — For the first time in its history, the United States Central Intelligence Agency has been forced to publicly identify one of its agents in order to defend him from a slander suit brought by an alleged agent of the Soviet Union.

The case, in Baltimore federal court, is regarded by lawyers on both sides as one that breaks entirely new legal ground. It is a strange amalgam of covert international intrigue and the open assertion of the constitutional protection provided by the American courts, even to alleged secret agents of a foreign power.

The crucial point in the legal strategy of lawyers retained by the C.I.A. to defend Juri Raus — ostensibly a \$10,600-a-year engineer in the Bureau of Public Roads in Washington — is that Raus is, or was, a paid undercover operative of the C.I.A. and that he committed the slander, if one was committed, on the orders of his C.I.A. supervisors as an official act.

By making this unusual assertion, Raus' lawyers are seeking to have Chief Judge Roszel C. Thomsen of the United States District Court grant a summary motion dismissing the \$110,000 damage claim of Berik Heine of Toronto, Canada, whom Raus has publicly labeled an agent of the K.G.B., the Soviet secret police.

The lawyers' argument is that Raus' charge against Heine is "privileged" because it was made by a "government official" who merely discharged his assigned duties.

Under two closely decided Supreme Court rulings in 1959, the traditional immunity from suit of cabinet officers and other government officials was extended to lower officers and other government officials of government departments who are "policymakers." One question here is whether Raus fits the "policymaking" requirement, and is therefore immune from the suit.

Judge Thomsen is insisting that Heine, whether or not he is a Soviet agent, must have as full and fair a trial of his damage claim as the law — and the C.I.A. — will allow.

At a hearing here on March 11, the latest in nearly 18 months of unnoticed and unpublicized public litigation in this case, Judge Thomsen, told Paul R. Connolly, a Washington trial lawyer representing Raus, that "you are not going to persuade this court that there is anybody in this country who does not have some rights."

Judge Grows Tart

This was only one of Judge Thomsen's tart comments to Connolly and E. Barrett Prettyman Jr., a former special White House assistant who is co-counsel for the C.I.A. agent, when the two lawyers explained that they could not and would not involve the intelligence agency, and when he spoke concerning the plaintiff on such occasions he was acting within the scope and course of his employment by the agency on behalf of the United States."

The motion for dismissal filed by Raus' lawyers adds that "under these circumstances, there arises in favor of the defendant an absolute privilege which precludes, even under a showing of actual malice, any possibility of recovery by the plaintiff."

Accordingly, the lawyers contend there can be no trial to determine the truth or falsity of the charges, and that the suit must be dismissed on motion.